ORDERED.

Dated: June 30, 2020

Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re	)	
	)	
Abdiel Echeverria and	)	Case No. 6:18-bk-07478-KSJ
Isabel Santamaria,	)	Chapter 7
	)	
Debtors.	)	
	)	
	)	
Abdiel Echeverria and	)	
Isabel Santamaria,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Adversary No. 6:19-ap-00141-KSJ
	)	
National Auto Finance Company	)	
And Ally Servicing, LLC,	)	
	)	
Defendant(s).	)	

ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION

Plaintiffs seek reconsideration of my Order and Memorandum Opinion Dismissing Adversary Proceeding with Prejudice,[1] which found the Plaintiffs lack standing to assert claims

[1] Plaintiffs' Motion for Reconsideration is Doc. No. 72. The Court's Memorandum Opinion is at Doc. No. 69, and the Court's Dismissal Order is at Doc. No. 70. Plaintiffs clarify their Motion only seeks reconsideration of the dismissal of their adversary proceeding with prejudice and not the denial of their Motion for Sanctions. Doc. No. 26. Defendants filed a Memorandum in Opposition. Doc. No. 74.

against the Defendants. Plaintiffs never listed these claims in their bankruptcy schedules, and they remain property of the bankruptcy estate that only the Chapter 7 Trustee can assert. Plaintiffs contend I erred in concluding this because they had sent earlier emails to the Trustee discussing their claims. Finding these older emails do not constitute new evidence or demonstrate any reason for reconsideration, the Motion is denied.

A motion for reconsideration must demonstrate plausible grounds why the court should reexamine its prior decision, and the movant must set forth facts or law "of a strongly convincing nature" to reverse a prior decision.[2] Reconsideration is "an extraordinary remedy to be employed sparingly" due to interests in finality and conservation of judicial resources.[3] "A motion for reconsideration 'addresses only factual and legal matters that the Court may have overlooked. It is improper on a motion for reconsideration to rethink what it had already thought through—rightly or wrongly.'"[4] Where courts have granted reconsideration, they act to: (1) account for an intervening change in controlling law, (2) consider newly available evidence, or (3) correct clear error or prevent manifest injustice.[5] "Far too often, litigants operate under the assumption … that any adverse ruling confers on them a license to move for reconsideration, and utilize such motion as a platform to relitigate issues that have already been decided or otherwise seek a 'do over.'…[A] court's order is not intended as a mere first draft, subject to revision at the litigant's whim."[6]

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[2] *In Re Environcon Intern. Corp.*, 218 B.R. 978, 979 (Bankr. M.D. Fla. 1998).
[3] *Mathis v. United States (In re Mathis)*, 312 B.R. 912, 914 (Bankr. S.D. Fla. 2004) (quoting *Sussman v. Salem, Saxon & Nielsen, P.A.*, 153 F.R.D. 689, 694 (M.D. Fla. 1994)) (internal quotation marks omitted). Federal Rule of Civil Procedure 59 is incorporated into the Bankruptcy Code by Federal Rule of Bankruptcy Procedure 9023.
[4] *D'Angelo v. Parker (In re Parker)*, 378 B.R. 365, 371 (Bankr. M.D. Fla. 2007) (quoting *In re The Loewen Grp. Inc. Sec. Litig.*, No. Civ. A. 98-6740, 2006 WL 27286, *1 (E.D. Pa. Jan. 5, 2006) (citing *Glendon Energy Co. v. Borough of Glendon*, 836 F.Supp. 1109, 1122 (E.D. Pa. 1993))).
[5] *In re Mathis*, 312 B.R. at 914 (citations omitted).
[6] *In re Woide*, No. 6:10-BK-22841-KSJ, 2017 WL 549160, at *2 (M.D. Fla. Feb. 9, 2017).

Although Plaintiffs do not state precise reasons for reconsideration, the Court assumes the older emails are offered as "newly available evidence."[7] But, really, Plaintiffs just restate arguments raised in their earlier Response in Opposition to Defendants' Motion to Dismiss ("Response").[8] Plaintiffs highlight three emails, dated April and May 2019, that they sent to the Chapter 7 Trustee to show they told him about the claims raised in this adversary proceeding.[9] Plaintiffs, by extension, must contend these emails establish sufficient disclosure of their pre-petition claims against Defendants to divest the Trustee of standing and bestow standing on them. This is not correct.

First, the older emails do not constitute "new evidence." Plaintiffs sent the emails to the Trustee and had them in ample time to include with their earlier Response. There is nothing "new" about them. The Plaintiffs simply waited to submit them until they filed this motion to reconsider, which is too late.[10]

Second, even if the Court considered the older emails as new evidence, Plaintiffs demonstrate no basis for reconsideration. It is immaterial that the Trustee informally had notice of the Plaintiffs' claims because the Plaintiffs never amended their bankruptcy schedules to list the claims as an asset available for administration in this Chapter 7 case. The only way Plaintiffs could divest the Chapter 7 Trustee of standing was to properly schedule the asset and then have the Trustee abandon it back to the Plaintiffs to pursue. They never made this mandatory amendment. Their claims remain forever in the bankruptcy estate for the Chapter 7 trustee to

[7] *See* Doc. No. 72, pg. 1. "The Order dismissing Plaintiffs' Adversary Complaint [Dkt. 70] and Memorandum Opinion [Dkt. 69] is based on erroneous factual findings which if not corrected, will result in 'manifest injustice.'"
[8] *See* Doc. No. 51.
[9] Doc. No. 72, Exhs. A and B.
[10] *Sussman v. Salem, Saxon & Nielsen, P.A.*, 153 F.R.D. 689, 695 (M.D. Fla. 1994).

administer. Informal emails, proofs of claim, or objections to claims do not divest the Chapter 7 Trustee of standing.

Because the Debtors failed to list the pre-petition claims against Defendants on their bankruptcy schedules, the Chapter 7 Trustee is the only party with standing to pursue the claims. And, as explained in the Memorandum Opinion, Debtors' rights are extinguished unless the claims are abandoned back to the Debtors. The Trustee has not abandoned Plaintiffs' claims against Defendants which remain unscheduled and part of the property of the bankruptcy estate. Plaintiffs lack standing to proceed with this adversary proceeding. Dismissal with prejudice was appropriate.

Accordingly, Plaintiffs' Motion for Reconsideration (Doc. No. 72) is denied.

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The Clerk is directed to serve a copy of this order on interested parties who do not receive service by CM/ECF and file a proof of service within three days of entry of this order.